IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 101 OF 2003

1. Dr. Nishikant Sukerkar,
   legal heir of Narsinva
   P. Sukerkar, Margao,
   Goa, and

2. Mrs. Anandibai Sukerkar,
   widow of N.P. Sukerkar,
   Margao, Goa.
   (since deceased) ... Petitioners.

Versus

1. Government of India,
   through Secretary,
   Ministry of Mines,
   Shashtri Bhawan,
   New Delhi,

2. State of Goa,
   through Chief Secretary,
   with office at Panaji, and

3. Gomantak Investment
   Pvt. Ltd., with office
   at Damodar Bhavan,
   Opp. High Court,
   Panaji, Goa. ... Respondents.

Shri Anil Diwan, Senior Advocate with Shri Dhruv Mehta and Shri M. S. Joshi, advocate for the petitioners.

Shri J. S. Vaz, Addl. Central Govt. Standing Counsel, for respondent no.1.

Shri N. K. Sawaikar, Addl. Government Advocate for respondent no.2.

Shri S. K. Kakodkar, Senior Advocate with Shri J.J. D'Souza, advocate for respondent no.3.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 29th July, 2003.

JUDGMENT (Per Rebello, J.)

This petition was originally filed in the High Court of Delhi and was numbered as Civil Writ Petition

no.5648/98. A transfer petition came to be filed before the Apex Court. By Order dated January 20, 2003, the Apex Court directed this petition to be transferred to this Bench of the High Court, to be heard alongwith Writ Petition No.268 of 1996, which was pending here. That petition has also been heard.

2. A few facts as they emerge from the pleadings of the petitioners and the documents annexed, may now be set out, for the purpose of disposing of the issues which arise in the present petition. The late Narcinva P. Sukerkar, in the year 1955 was granted mining concession being title No.7 of 1955 for an area admeasuring 22.0807 hectares of village Pissurlem, Sattari Taluka, North Goa, by the then Portuguese Administration under the Portuguese Mining Laws of 1906. Goa came to be annexed by conquest and became a part of the Union of India on 19th December, 1961. By Section 5 of the Goa, Daman and Diu Administration Act, 1961, all laws in force prior to liberation were continued. The Mines and Minerals (Regulation and Development) Act 1957, (hereinafter referred to as "the MMRD Act") became enforceable with effect from lst October, 1963, except Section 16 which came into force with effect from 15th June, 1966. The MMRD Act repealed corresponding Portuguese laws. The Controller of Mining Leases purporting to exercise powers under Section 16 sought to and converted several mining concessions

granted under the erstwhile Portuguese regime, into leases. Against those Orders, revision applications came to be filed, which were allowed. One such revision was in respect of the lease granted to Vassudev Mahadev Salgaokar. By order of 5th August, 1975, the Central Government held that the Rule speaks of the power to modify a lease executed prior to 25th October, 1949 and therefore, in respect of leases granted after 25th October, 1949, there could be no such power. Section 16 then came to be amended by an Act of Parliament and came into force with effect from 12th September, 1972.

Fresh notices were issued in the year 1975 proposing modification based on the 1972 amendment to Section 16. Pursuant to notice issued to late Sukerkar, the Government of Goa terminated the mining concession granted to the late N. P. Sukerkar by Order dated 6th April, 1976. A revision came to be filed before the Central Government. Some of the grounds raised were, as to why mining operations could not be undertaken and as reflected from the order passed in revision, were as under:-

(i) The concession is surrounded by several concessions, village hutments and agricultural land;

(ii) He had tried several times to acquire access roads to the concession through the village, but the villagers refused fearing that the agricultural land would be damaged; and

(iii) The other concessions refused him permission to access through their concessions.

In revision a finding was recorded that the revision petitioner had not utilized the opportunity given to him to bring his difficulties to the notice of the Government and instead, chose to claim that he was working in the area when he was not. To avoid repetition, another ground raised and as set out in the petition was that the MMRD Act was inapplicable to mining concessions.

On 5th January, 1977, consequent to the termination, the Government of Goa issued a Notification under Rule 59 declaring the said area covered by Sukerkar's concession as free for grant, by publishing the same in the Government Gazette 43, II series, dated 20th October, 1977. On 4th March, 1977, an order came to be passed stating that during the pendency of the revision application the State Government should not take any action in respect of the area which is the subject-matter of the revision petition

as the matter was sub judice. The revision itself came to be dismissed on 10th May, 1978. The order passed in revision was not challenged.

3. Inspite of the termination and the notification declaring the area free for grant, the Controller of Mines, Central Government on 8th May, 1979, issued a show cause notice to the late N.P. Sukerkar as to why the mining concession granted to him should not be modified into a mining lease. This show cause notice was issued by resorting to Section 16 of MMRD Act, 1957 and the Mining - Leases (Modification of Terms) Rules, 1956. On 25th October, 1981, the mining concession granted to the late Sukerkar was purported to be modified into a mining lease by the Controller of Mining Leases. The order sets out that the period of mining lease would be 30 years starting from lst October, 1963. That period would expire on 30th September 1993. N. P. Sukerkar expired on 29th September, 1982, without leaving any issue. The petitioner claims right as a testamentary heir under the will of the late N.P. Sukerkar. At the time of Sukerkar's death, his widow was alive and was also a party to this petition. She has subsequently expired during the pendency of the petition.

The Controller of Mines purported to modify also other mining concessions granted under the Portuguese

regime. Those orders came to be challenged by those concession holders before this Court. On 29th September,1983 vide judgment in Special Civil Application No. 151/B/75, in the case of **Vassudev M. Salgaonkar vs. Union of India**, the order of the Controller of Mines was set aside for reasons set out in the judgment. Petitions filed by other petitioners, challenging the order of modification also came to be allowed. As already stated the present petitioner nor late Sukerkar had challenged the said order of modification.

On 27th May, 1987, the law enacted by Parliament and known as the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987 came into force, which hereinafter shall be referred to as "the Act of 1987". By the said Act, mining concessions granted under the Portuguese regime by legal fiction were deemed to be leases under the MMRD Act. By virtue of a Constitutional Amendment Act, on 30th May, 1987, the Union Territory of Goa, Daman and Diu ceased to exist and Goa became a State as on and from 30th May, 1987. Daman and Diu continued to exist as a Union Territory.

4. Respondent no.3 had applied for grant of a mining lease for the area notified vide Notification dated 5th January, 1977, by his application dated 20th December, 1984. As it was not granted within twelve months,

respondent no.3 against the deemed rejection preferred a revision application before the Central Government. On 11th January, 1989, though revision was pending, respondent no.3 after the Act of 1987 came into force applied for a prospecting licence in respect of the entire area of Sukerkar's concession and also some more area on the western side. Respondent no.3 also filed a writ petition which was numbered as W.P.No. 327 of 1999. On 3rd August, 1989, the State Government issued a letter agreeing to convert the application for mining lease into an application for prospecting licence in view of the letter of the Central Government dated 3rd March, 1988. In view of this letter dated 3rd August, 1989, this Court permitted Writ Petition no.327 of 1989 to be withdrawn by Order of 11th October, 1989. On 24th August, 1992, the State Government granted prospecting licence to respondent no.3 for the area in question. On 18.5.93 Sociedade de Fomento, purporting to act on behalf of Sukerkar, applied for renewal of mining lease. Sociedade de Fomento was informed by letter dated 20.7.93 that the area was not available for re-grant or renewal. The Central Government has thereafter granted approval for the grant of mining lease to the respondent no.3, subject to other requirements.

On 8th April, 1997, the petitioners claiming to be the legal heirs of N. P. Sukerkar, applied to the Central Government under Section 4(3) of the Abolition Act

for inclusion of mining concession bearing title no.7 of 1995 in the Schedule to the 1987 Act. That application was dismissed by Order of 9th September, 1998, against which the present petition has been preferred.

Respondent no.3 as Intervener has filed his reply on lst January, 1998. On 2nd September, 1998 reply was filed by the Government of Goa. The petition thereafter, as noted earlier, had been transferred to this Bench of the Bombay High Court and has been renumbered as Writ Petition No.101 of 2003.

5. On behalf of respondent no.1, a reply has been filed by S. R. Sharma, Under Secretary to the Government of India, Department of Mines. It is pointed out that a perusal of the preamble of the Abolition Act 1987 would indicate that only those mining concessions in existence in 1987 were abolished under the Abolition Act 1987 and the mining concessions which had ceased to exist after merger of Goa, Daman and Diu into the Union of India with effect from lst October, 1963, were not acquired under the said Act of 1987, as a result of which the name of late N. P Sukerkar was not mentioned in the First and Second Schedules to the Abolition Act, 1987. It is set out that the Order dated 9th September, 1978, passed by the Central Government is a reasoned, valid and speaking order. The mining concession of Sukerkar was terminated and the

revision preferred was dismissed and, consequently the area was available for grant. Dealing with the Order date 20th October, 1981, it is pointed out that the modification of the terms and conditions of the mining concession made by the Controller of Mining Leases has no relevance due to the non-existence of the mining concession terminated on 6th April, 1976. Referring to the judgment of this Court it is set out that the High Court has nowhere indicated that the act of determination of a mining concession was a nullity. The petitioners' mining concession was not in operation and, therefore, is not specified in either of the Schedules to the Abolition Act. The Act has only abolished mining concessions which were in operation and specified in Schedules I and II. Petitioner's concession was not in operation. The Act does not provide this privilege to all the mining concessions granted under the Portuguese regime. Section 5 would only be applicable to mining concessions which are now deemed to be mining leases under Section 4 of the Act. Under Section 4(3) what can be corrected is omission, error or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder included in the Schedule and not of a concession not included, in Schedules I and II of the Abolition Act.

An affidavit has also been filed on behalf of respondent no.2. It is contended that the petitioners have

no locus standing to file the present petition as they are bound by all acts and omissions of their predecessors whose mining concession was cancelled during his lifetime by the State Government as well as by the Central Government. It is also pointed out that the petition is not maintainable due to delay and laces on the part of the petitioner. The facts already set out pertaining to termination of the concession have then been pleaded. It is pointed that the petitioner and their predecessor in interest had/have duly acquiesced in the rights created by the State Government in favour of respondent no.3 in respect of mining area of the mining concession which stood in the name of N. P. Sukerkar, after cancellation of his mining concession/lease. The Order dated 24th August, 1992, was duly published in the Official Gazette on 10th September 1992. The decision of the State Government to grant prospecting licence has been approved by the Central Government vide letter dated 6th August, 1996. It is pointed out that the understanding of law at the time of the extension of the Act of 1957 was that the mining concessions granted under the Portuguese mining laws were to be construed as mining leases under the MMRD Act 1957. In pursuance of the communication from the Ministry of Mines, Government of Goa, proceedings were initiated in the matter of enforcement of the provisions of the MMRD Act and a number of mining concessions were determined by the Government on account of various violations of conditions.

Pursuant to the Notifications by the Government declaring these areas free for re-grant, some of these areas were applied for prospecting licences/mining leases by various applicants and thus fresh rights were created in favour of such applicants wherever the application for grant of prospecting licence/mining lease were considered. Pursuant to the Notification dated 4th January, 1966, the Controller of Mining Leases proceeded to modify the erstwhile mining concession into leases under Section 16 of the Act of 1957 and various orders were issued. Aggrieved, parties filed revisions and by a common order dated 15th May, 1975, the revision applications were disposed of. Two ground considered were:-

(a) Whether the concessions were to be treated as leases for the purpose of provisions of the Act of 1957;

(b) And if so, whether the Controller of Mining Leases had power to modify that.

The revisional authority held that though the concessions were synonymous with leases as understood under the Act of 1957, however, in the light of the definition of existing mining leases, held that the Controller had no authority to modify the leases. During the pendency of the revision application, the MMRD Act of 1957 was amended in

1972 and in accordance with the amended provisions of law, the Controller of Mining Leases started the process of modification afresh. It is then that various concession holders filed Writ Petitions. When the matters came up for hearing and on the basis of the stand by the Government of India, the petitions were partly allowed restraining the Union of India from enforcing Notification dated 10th March, 1975 and from taking steps or proceedings for the purpose of treating the concessions as existing mining leases under the MMRD Act. Based on the said ruling another Division Bench held on 22nd November, 1983, that Government was not entitled to recover royalty in respect of these concessions. This judgment resulted in a situation where the provisions of the MMRD Act could not be made applicable and in order to overcome this situation the Abolition Act was enacted in 1987. By this enactment 596 concessions which were listed in Schedule I and II appended to the Act were abolished and declared as mining leases under the MMRD Act. Out of 782 concessions granted under the Portuguese mining lease only 596 concessions figured in the Abolition Act. The concession of the petitioners is not reflected in this list. It is then pointed out that after the area was notified for re-grant, three applications were received in 1977 and one in 1984 over the area in which the erstwhile mining concessions were granted to the late Sukerkar. The three applicants were:-

i) M/s. A. H. Jaffar and Sons,

ii) Shri Shantaram Kantak and

iii) Shri Vaikunt P. Raikar.

The three applications were not disposed of within a period of 12 months and as such were deemed to have been refused by operation of law. Those three applicants did not prefer revision applications against the order of deemed refusal and, as such, they were considered as lapsed. On 20th December, 1984, M/s Gomantak Investment Pvt. Ltd., respondent no.3 had applied for grant of mining lease over the area of 29 hectares of land which inter alia also included the area of the former concession held by Sukerkar. The application could not be disposed of within a period of 12 months and as such, was deemed to have been refused by operation of law. M/s Gomantak Investment Pvt. Ltd. preferred a revision to the Central Government under Rule 54 of the Mineral Concession Rules, 1954. When the revision application was pending respondent no.3 filed Writ Petition no. 327/89 before this Court. The petition was allowed to be withdrawn by Order dated 10th October, 1990 in the light of the communication dated 3rd August, 1989, from the State Government allowing conversion of the application for mining lease filed in 1984, into a prospecting licence as was permissible in view of the

Government of India instructions communicated to the State Government vide letter dated 3rd March, 1988. During the pendency of the application M/s Ferromet Concentrates, who are the petitioners in Writ Petition No.268 of 1996 had applied by an application dated 9th August, 1988, for a prospecting licence over an area of land admeasuring 11.33 hectares which was found overlapping with that applied for by M/s. Gomantak Investment Pvt. Ltd. As the area was already applied for by M/s Gomantak Investment Pvt. Ltd., the application of M/s Ferromet Concentrates was not processed and, as such, resulted in deemed refusal. M/s Ferromet Concentrates did not pursue the matter further. As respondent no.3 has satisfied the provisions of the MMRD Act and the Rules, a prospecting licence was granted in their favour by order of the State Government dated 24th August 1992. On 23rd November, 1993, they applied for mining lease. On 8th May, 1993, M/s. Sociedade Fomento Industrial Ltd., of which M/s. Ferromet Concentrates is stated to be a division, applied for renewal of mining lease in Form J in respect of the area of the mining concession held by the late Sukerkar. By communication of 20th July, 1993, M/s Sociedade de Fomento Industrial Ltd. were informed that the said area is not free for grant, nor an existing lease for renewal. They were also requested to clarify by evidence in what capacity they had applied for renewal of the area applied for. Ferromet Concentrate, a division of Sociedade de Fomento Industries filed Writ

Petition No.268/96 seeking a direction to the State Government to notify the area for re-grant and then to consider the application. During the pendency of the above writ petition, the mining lease application of respondent no.3 was processed and after conducting the necessary enquiries into the matter was referred to the Central Government for their prior approval under Section 5 of the MMRD Act. Vide letter of 6th August, 1996, the Government of India conveyed their approval for the grant of mining lease in favour of respondent no.3. On account of the pendency of the petition filed by M/s Ferromet Concentrates, the grant of mining lease is pending. It is then pointed out that the Directorate of Industries and Mines had prepared a list of concessions which showed the position of the Concessions. That list was not updated from time-to-time and, therefore, the said list could not be taken as authentic and relied upon as evidence in the absence of supporting documents relating to the entries made in the column "observation". To illustrate, it is pointed out that one concession is shown in the chart as "cancelled" bearing no. T.C.137/53/22/57, whereas a revision was preferred and the Order was set aside. That factual position has not been reflected in the chart and the chart cannot be taken as authentic and relied upon. Explanation is also sought to be given about three other concessions indicated in Annexure P-15.

6. At the hearing of this petition, on behalf of the petitioners it is contended as under:-

Neither the MMRD Act 1957, nor Mineral Concession Rules, 1960, (hereinafter referred to as "the Mineral Rules") are applicable to any concession granted under Decree No.0/9/1906 by the erstwhile Portuguese regime, including concession bearing title no.7 of 706, 1955, granted to the late N. P. Sukerkar. Any Orders passed under the MMRD Act or the Mineral Rules prior to May 22, 1987, are void and without jurisdiction, in view of the judgments of this Court in **Vassudeva. M. Salgaonkar Vs. Union of India** (supra) on 29th September, 1993 and Special Civil Application No.31/B/78 decided on 22nd November, 1983, in the case of **Emco Goa Pvt. Ltd. vs. Union of India & Ors.** It is only in 1987, under the Act of 1987 that the Portuguese concessions mentioned in the Schedules are abolished and declared as mining leases under Section 4 of the Act of 1967. Consequently, the Notification dated 5th January, 1977, declaring the area free of grant and the Order of the Central Government dated 10th May, 1978, rejecting the revision applications are void, non est, nullities and ineffective. It is submitted that the Central Government, while disposing off the revision application filed by the late Sukerkar, did not take into consideration, ground 12.1 raised in the revision petition, namely that the MMRD Act and the Mineral Rules framed

thereunder were not applicable to the Portuguese concessions. It is, therefore, submitted that the rights available to the late Sukerkar in respect of the concession remained alive and are not affected. The termination Order dated 6th April, 1976, therefore being a nullity and hence void, is liable to be ignored for all purposes. There can be no waiver of the right to challenge or invalidate nullity. The Apex Court, it is submitted, in several cases has held that where a decree is without jurisdiction, the principles of approbate and reprobate, res judicata, and estoppel, will not be an impediment to set aside a decree which was passed without jurisdiction. Reliance is placed on various judgments including in **Sushil Kumar Mehta vs. Gobind Ram Bohra (dead) through his LRs., (1990)1 SCC 193** and **Isabella Johnson (Smt.) vs. M. S. Susai (Dead) by L.Rs., (1991) 1 SCC 494.** It is then submitted that as the concession of Sukerkar was not found in the Schedule, by the application of 8th April, 1996, presented to the Central Government a request was made for inclusion of the said concession in Schedule I. It was set out therein that for want of inclusion of concession no. 7/1955 in Schedule I, the same concession would still be held valid in the eyes of law. It was stated that after inclusion, the petitioner could apply for renewal. It is also submitted that the application of the petitioner had been wrongly rejected by the Central Government by holding that the application had been presented beyond time, eventhough no

time had been specified. On the contrary there is a power coupled with a duty cast upon the Central Government to correct errors and omissions. Insofar as the impugned Order dated 9th September, 1998, it is pointed out that the finding recorded that there was a delay of ten years in moving the application is unsustainable, as there is no particular period prescribed or any period of limitation within which an application for correction is required to be filed before the competent authority under the Act of 1987. In fact, it is pointed out that the provisions of the Act of 1987 confer a statutory obligation on the Central Government to correct any errors or omissions which may be found in the Schedule and the same may be on the basis of any information received by it or otherwise. The power, it is pointed out, conferred on the Central Government includes the power to include a concession not included on account of omission. Reliance is placed on the judgment in case of **Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. & Anr., (1999) 6 SCC 82,** to contend that the application could not be rejected on the ground of delay as no time was prescribed by the statute. It is also pointed out that the impugned Order did not take into consideration the Order passed by the Controller of Mining Leases dated 20th October, 1981, modifying the concession into a lease for a period of 30 years, starting from lst October, 1963, and that in view of the modification there was no occasion for

making an application prior to 30th September, 1993, i.e the expiry of the 30-year period. It is then submitted that the Secretary, Ministry of Mines, erred in law in holding that only mining concessions in existence in 1987 were specifically included in the Schedule to the 1987 Act. This, it is pointed out was based on a wrong and misleading statement by the State Government that the concessions which were cancelled were not included in the Schedules to the Act. Reliance is placed on charts annexed to the petition, one showing 62 concessions which have been cancelled, but their names are still found in Schedule I of the Abolition Act and the other of three concessions though cancelled and area declared free, where names are still found in Schedule I to the Act. It is pointed out that there is no denial of the aforesaid statements by the Central Government. The State Government has given explanation of one concession out of three. It is, therefore, submitted that the finding that since the mining concession of the late N. P. Sukerkar was determined, the same were not in existence and hence not included like other 99 concessions which were cancelled and not included in Schedule I, is incorrect. It is pointed out that nowhere in the Act of 1987 is there any expression "mining concession "in existence", to be found and, therefore, the submission that omission can be corrected only in respect of existing mining concession is erroneous. It is submitted that the Division Bench clearly held that the

mining concessions granted under the Portuguese Colonial mining laws were not mining leases within the meaning of the MMRD Act 1957. The Central Government, it is contended has also so understood it, as was reflected in the affidavit of Shri A. K. Venkatasubramanian filed in the said petition. Parliament has also accepted the said judgment and enacted the Act of 1987 which is clear from the statement of Objects and Reasons. Reference to the Statement of Objects and Reasons, it is stated is permissible for understanding the background, the antecedent state of affairs, surrounding circumstances in relation to the statute and the evil which the statute seeks to remedy. Reliance is placed on the decisions in **Bhaji vs. Sub-Divisional Officer Thadle & Ors., 2003(1) SCC 692** and **Shashikant Laxman Kale & Anr. vs. Union of India & Anr., 1990 (4) SCC 366.** It is also pointed out that the Secretary mis-directed himself in law in relying upon the Order dated 7th April, 1976, under which the mining concession of the late N. P. Sukerkar was purported to be terminated. It is submitted that the said Order is a nullity in law as the Government could not exercise powers under the MMRD Act 1957 and the Mineral Rules, in view of the fact that mining concessions were granted under the Portuguese colonial mining laws. The Division Bench also in its judgment has clearly held that the mining concessions granted under the Portuguese regime were not amenable nor could be regulated under the

provisions of the MMRD Act. Reliance is placed in the case of **Government of Orissa vs. Ashok Transport Agency & Ors., (2002) 9 SCC 28** for the meaning of the words, 'void' and 'voidable'. The purported termination being a nullity, it must be deemed that the mining concession continues. Reliance is also placed on cases of **State of Orissa & Ors. vs. Brundaban Sharma & Anr., 1995 Supp. (3) SCC 249, Jabbalpore Electric Supply Co. Ltd. vs. The Madhya Pradesh Electricity Board & Ors., AIR 1974 Cal. 309, Abdullamiyan Abdulrehman vs. Government of Bombay, AIR (20) 1942 Bom. 257** and **A'bad Cotton Mfg. Co. Ltd. vs. Union of India, AIR 1977 Guj. 113.** These judgments will be adverted to if necessary as there can be no difficulty in accepting the proposition that if an act is void it is a nullity at law and there is no need for an order of the Court to set it aside, and every proceeding which is founded on it is also bad, though at times it is convenient to have the Court declare it to be so and this would apply to all acts and/or orders whether they are judicial, quasi-judicial, or even in respect of administrative action. It is submitted that Section 4(3) should not be read literally as is sought to be construed by respondent no.3, for if it leads to absurdity it should be avoided. Reliance is placed on the judgment in **K. P. Varghese vs. Income Tax Officer, Ernakulam & Anr., 1981(4) SCC 173.** Dealing with the submission on behalf of respondent no.3 that the Government of India did not recognize the mining

concession upon conquest of Goa on 19th December, 1961, it is submitted that the submission cannot be permitted in the absence of pleadings. The judgment in **Vinodkumar Shantilal Gosalia vs. Gangadhar Narsingdas Agarwal & Ors., AIR 1981 S.C. 1946,** is sought to be explained and why it is inapplicable to the facts of the present case.

7. On behalf of respondents it is submitted that the meaning of Section 4(3) of the Abolition Act 1987 is plain and does not require any interpretation. Under Section 4(3), the Central Government must be satisfied first as to whether the predicates for which the power is conferred and is to be exercised, exist or are satisfied. However, the Central Government is not bound automatically to exercise the power. The Central Government it is contended, may exercise the power. There is no duty to exercise the power merely because the predicates are satisfied. The Central Government is entitled to refuse exercise of jurisdiction, if it is invoked after unreasonable time or other exigencies have sprung up making it unjust to grant relief. Doctrine of discretion coupled with duty does not apply in the context of the Abolition Act of 1987. Petitioner, it is submitted is blowing hot and cold by approbating and reprobating. On the one hand the petitioners contend that the determination of the concession is bad as it was made under the MMRD Act and Mineral Rules which do not apply to mining concessions yet,

at same time, they seek to rely on the modification of the concession made in 1981 under Section 16 of the MMRD Act. One who contradicts himself, it is pointed out, should not be heard. From the Statement of Objects and Reasons appended to the Abolition Bill, the ratio of the High Court judgment appears to be not correctly stated. A wrong statement of what is purported to be decided by the High Court does not bind this Court. Apart from that it is well-settled that the Statement of Objects and Reasons cannot be invoked in aid of interpretation of statutes. Even wrong reasons given in the Statement of Objects and Reasons for enacting the law cannot colour the law in the interpretation of the enactment. Reliance is placed on the commentaries by G. P. Singh 8th Edition (pp.208-211) and Bindra 8th Edition (pp.339-345) on "Interpretation of Statutes". It is then submitted that determination of the Sukerkar's concession in 1976 is not void for the following reasons: The Portuguese mining laws stood repealed with the extension of the MMDR Act to the Goa, Daman and Diu from lst October, 1963. The right to mining conferred on Sukerkar by his concession could, therefore, be brought to an end if necessary only under the MMRD Act, 1967 and the Mineral Rules. Even assuming that Portuguese colonial laws continue to apply to mining concessions inspite of their repeal, there is power in the Portuguese mining laws which enables grant of mining rights in the nature of mining leases in the situation in which Sukerkar mining concession

was determined, i.e. for not carrying out mining operations. At any rate, it is pointed out that Sukerkar's mining rights either by way of concession or mining lease had lapsed upon conquest of Goa in 1961. The said right had not been recognized by the Republic of India by any law. Mere continuance of Portuguese mining leases from 5th March, 1962, by the Goa, Daman and Diu Administration Act, 1962, or paragraph 4(2) of the Goa, Daman and Diu Laws Regulation, 1962, did not save rights acquired by subjects prior to 20th December, 1961. Reliance for that is placed on the judgment in the case of **Vinodkumar Shantilal Gosalia vs. Gangadhar Narsingdas Agarwal & Ors.,** (supra).

It is then submitted that the petitioners' contention that they had collaterally challenged the alleged void Order of 1976 in the proceedings before the Central Government under Section 4(3) of the Act of 1987, is not correct. Such a challenge can only be by way of a defence to any proceedings instituted by any authority against the petitioners. Reliance was placed on "Administrative Law" by Wade, 8th Edition pgs. 289 to 291. There was a specific remedy, namely revision, which the petitioners had rightly invoked and when a specific remedy is provided by an enactment, no collateral attack is permissible. In the application under Section 4(3) of the Abolition Act, 1987, the petitioners have directly challenged the alleged void order of determination of

concession and have reiterated, the challenge in the Writ Petition. Nullity it is pointed out cannot be used as a sword but only as a shield and it is for this reason that all judgments say that plea of nullity can be taken at any time or at any stage. In the proceedings before the Central Government under Section 4(3) of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Leases) Act, 1987, the petitioners were using the alleged nullity of the order of termination of the concession in 1976 as a sword. The attack is direct, not collateral. It is then submitted that the petition is grossly barred by laches. Against the order of termination in the year 1976, a revision was preferred which was dismissed in 1978, no further challenge was made to that order. The petitioners also did not challenge the Notification declaring the area open for grant. The Order passed in 1981 modifying the mining lease would be of no consequence as the concession had already been terminated and the area notified. The judgment in the case of **Madras Port Trust** vs. **Hymanshu International by its Proprietor V. Venkatadri (dead) by legal heirs, (1979) 4 SCC 176,** it is pointed out is distinguishable on facts. There the matter went to the Apex Court from a suit allegedly wrongly decreed by lower courts although barred by limitation. The Apex Court refused to interfere with in its discretion under Article 136. Whilst so doing, the Apex Court has observed that public authorities should not use the plea of limitation to

defeat just and legitimate claims. The High Court, it is pointed out, has no power like the Supreme Court, under Articles 136 or 142. In any event what the Court has to consider is not limitation but laches. It is lastly pointed out that the order of the Central Government does not suffer from any infirmities and, consequently, the petition should be rejected.

8. We may now reproduce the reliefs prayed for in the Writ Petition as that would be material for determining the controversy, even considering the contentions and arguments advanced at the Bar. The petitioners have prayed as under:-

> "(a) Issue a writ of certiorari or any other appropriate writ, order or direction to quash the Order dated 9.9.1998 passed by the Secretary, Ministry of Mines, Government of India;
>
> (b) direct by way of appropriate writ, order or direction to the Central Government to include the Mining Concession being title No.7 of 1955 admeasuring 22.0807 hectares Village Pissurlam, Sattari Taluka, North Goa in the First Schedule to the Goa, Daman & Diu Mining Concessions (Abolition an Declaration as Mining Leases) Act, 1987."

9. From the reliefs as prayed for, the pleading and the arguments advanced, the questions which emerge for consideration would be as under:-

(1) Does the power under Section 4(3) to

correct error, omission, or mis-description, include the power to include a concession not included, in the First or Second Schedule to the Act of 1987?

(2) Can it be said that the order of termination dated 1976 terminating the mining concession of the late N.P. Sukerkar, under the MMRD Act is a nullity at law and the concession still subsists? If so, considering the creation of third party rights, ought the relief as prayed for, to be granted in the exercise of the extraordinary jurisdiction of this Court?

(3) Is it open to a petitioner in a challenge to the non-inclusion of a concession in the Schedule to the Act of 1987, to contend in a petition filed as a petitioner, that eventhough he had not challenged the order dated 10th May, 1978, dismissing the revision application, upholding the order of termination of the mining concession, it is still open to him in the present

proceedings to challenge the order as a nullity at law, or is such a challenge only open in collateral proceedings to a respondent/defendant? and

(4) Is the petition liable to be dismissed on the ground of laches?

10. With the above, we may now advert to the relevant part of the preamble to the Goa, Daman and Diu Mining Concessions (Abolition and Declaration as Mining Leases) Act, 1987, which reads as under:-

> " An Act to provide for the abolition of the mining concessions in operation in the Union Territory of Goa, Daman and Diu and specified in the First and Second Schedules, and for the declaration of such mining concessions as mining leases under the Mines and Minerals (Regulation and Development) Act, 1957 with a view to the regulation of the mines to which such concessions relate and for the development of minerals under the control of the Union and for matters connected therewith or incidental thereto."

Section 3 of the Act reads as under:-

> "The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment (other than this Act) or any judgment, decree or order of any court, tribunal or other authority of any instrument having effect by virtue of any enactment other than this Act."

We may also gainfully reproduce Section 4 to the extent it is material for the point that has to be answered;-

"S.4. Abolition etc., of mining concessions.

(1) Every mining concession specified in the First Schedule shall, on and from the appointed day, be deemed to have been abolished, and shall, with effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply, to such mining lease.

(2) Every mining concession specified in the Second Schedule shall, on and from the day next after the date of grant of the said concession and specified in the corresponding entry in the eight column of the said Schedule, be deemed to have been abolished and shall, with effect from that day, be deemed to be a mining lease granted under the Mines and Minerals Act, and the provisions of that Act shall, save as otherwise provided in this Act, apply to such mining lease.

(3) If, after the date of assent, the Central Government is satisfied, whether from any information received by it or otherwise, that there has been any error, omission or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder specified in the First or the Second Schedule, it may, by notification, correct such error, omission or misdescription, and on the issue of such notification, the First or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly."

A perusal of Section 4, would show that every mining concession specified in the First Schedule shall, on and from the appointed date be deemed to have been abolished and with effect from that date be deemed to be a mining lease. The First Schedule contains a list of 591 concessions, as granted as and upto 30th August, 1961. Schedule II contains a list of five concessions which were

granted between the dates 11th July, 1963 and 10th August, 1963. Together, therefore, these would be 596 concessions. On a reading of the Section, the language is clear, that Section 4 (1) and (2) have abolished only the mining concessions specified in the First and Second Schedules and they are deemed to be mining leases granted under the MMRD Act. It is with this background that Sub-section (3) will have to be considered. Sub-section (3) provides that after the date of assent, if the Central Government is satisfied whether from any information received by it or otherwise, that there is any error, omission or misdescription in relation to the particulars of any mining concession or the name and residence of any concession holder specified in the First and Second Schedules, it may, by notification, correct such error, omission or misdescription and on the issuance of such Notification, the First and Second Schedules, as the case may, shall be deemed to have been amended accordingly. A plain and literal reading of the language makes it clear and in the absence of any ambiguity in the language that the error must be in respect of the concession listed either in Schedules I or II. The error, omission or misdescription must either be relating to particulars of any mining concession listed, or the name and residence of any concession holder listed. If this language which is unambiguous is considered, then the power to correct the error, omission, or misdescription is only in respect of the concession already listed in List I and

II. The submission on behalf of the petitioners is that Section 4(3) includes also the power to include concessions which have not been included, for if such interpretation is not given, it would deprive a person of his property rights leaving him without a remedy rendering the statute vulnerable to attack on the ground of violation of Articles 14 and 300-A of the Constitution of India. It is sought to be pointed out that there is no answer given by the Central Government as to deficiencies pointed out in the pleadings on record in respect of the inclusion of concessions already cancelled or inclusion of three concessions already cancelled and declared free. In these circumstances if the Section is read literally, it would lead to an absurdity and, therefore, the Court should give an interpretation which would further the objective, which would be a power to include concessions which are existing but not included.

It is no doubt true that reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. (See **Bhaji vs. Sub Divisional Officer, Thadle** (supra) and **Shashikant Laxman Kale** (supra), as also the judgment in **State of West Bengal vs. Subodh Gopal Bose & Ors., AIR 1954 S.C. 92.** The Statement of Objects and Reasons is not part of the history of the legislation. It is merely an

expression of what, according to the mover of the Bill, is the scope and purpose of the legislation. It is not admissible to ascertain the intention of the Legislature. In any case where the language of the statute is plain and unambiguous it does not require to be interpreted by any other mode of interpretation except the literal construction. It may be scarcely necessary to observe that the maxim under consideration – **" Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est"** (in the absence of ambiguity, no exposition shall be made which is opposed to the express words of the instrument) applies equally to the interpretation of the Act of Parliament; the general rule being that **"a verbis legis non est recedendum".** A court of law will not make any interpretation contrary to the express letter of a statute; for nothing can so well explain the meaning of the makers of the Act as their own direct words, since **'index animi sermo'**, and **'maladeicta expositio quoe corrumpit textum'.** "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first place, reference to cases". And if the words used are clear, even inconvenience will not justify the Court in departing from their ordinary meaning: **"absoluta sententia non indiget expositore".** "Nothing", observed Lord Denman, "is more unfortunate than a disturbance of the plain language of the Legislature, by

the attempt to use equivalent terms". (Broom's Legal Maxims Tenth Edition, First Indian Report, MTs. 1993 at page 422). We may also gainfully refer to the following observations in **J. P. Bansal vs. State of Rajasthan & Anr., (2003) 5 SCC 134**:-

> "14. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending of altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by 'an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so'. (See: Frankfurter : Some Reflections on the Reading of Statutes in 'Essays on Jurisprudence', Columbia Law Review, p.51.).
>
> 16. Where, therefore, the 'language' is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. ....."

The contention advanced on behalf of the petitioner is what happens where an existing mining concession, for example is excluded, assuming that Section 4 has only taken into consideration mining concessions which were in existence at the time when the Act came into force. It may be also

pointed out that it is the case of the petitioners that mining concessions which have been cancelled have also been included in the list. Will the mere fact that a non-existing or non-functioning mining concession is included or excluded have any relevance for the purpose of construing Section 4 of the Act? Section 4(1) and Section 4(2) speak of mining concessions included in the First or Second Schedule. These are the concessions which are abolished and deemed to be mining leases. Section 4(3) will have to be construed bearing in mind Sections 4(1) and 4(2). In our opinion, considering the plain language of Sub-section (3) of Section 4, the power conferred on the Central Government is the power to correct error, omission or misdescription only in respect of those mining concessions which are listed in Schedule I or II as referred to in Sections 4(1) and 4(2). The exercise of power stops there. It does not include the power to include in the Schedule, concessions which Parliament has not included. It may also be borne in mind that by virtue of Sections 4(1)and 4(2) of the Act, two things have taken place. Concessions which have been included in the Schedules have been abolished and they have been deemed to mining leases. Insofar as the First Schedule is concerned, they are deemed to have been abolished from the appointed day and shall with effect from that date, be deemed to be mining leases. Insofar as the Second Schedule is concerned, it is on and from the date next after the date

of grant of the said concession and specified in the corresponding entry in the eight column in the Second Schedule are deemed to have been abolished. We are, therefore, clear that the Order of the first respondent rejecting the application of the petitioner on that count is correct and within jurisdiction. The petition on this count itself ought to dismissed. It is true that this interpretation does not provide for inclusion of even an existing mining concession, if there be one. That omission cannot be supplied by reading into Section 4(3) what cannot be read. That can only be made good by Parliament by amending the law. The purported concession of the petitioners is not included in Schedule I. On the construction of Section 4(3), even if it is existing, it cannot be included. The petitioners have not challenged the vires of Section 4(3) on the ground that in such a case the Section would violate Part III of the Constitution or Article 300-A of the Constitution of India. Once it is held that there is no power to include a concession, the order impugned cannot be faulted with. The other ground of challenge to the Order, namely delay in applying for inclusion, need not be answered. Even otherwise, if no period of limitation is set out, the application ought to have been made within a reasonable time. That was not done. The view taken on that count cannot be said to be a view which could not be taken. The first question must be accordingly answered.

11. However, the order has also been attacked on the ground, that the order of termination in the year 1976 is a nullity and, as such, the first respondent erred in law in not treating the concession as existing, and secondly, not taking into consideration that there was a renewal of the mining lease in the year 1982. Really speaking considering the reliefs prayed the question does not arise, after answering the first contention. However as it was argued it may be considered. Admittedly, the concession was terminated by Order dated 6th April, 1976, by resorting to Rule 27 of the Mining Concession Rules, 1960. A revision preferred against the said Order was dismissed on 10th May, 1978. The termination was on the ground that the mining lease was not being operated. The petitioners did not challenge the said Order. In other words the decision became final. The petitioner so understood the order as a termination and the land open for re-grant as stated by the petitioner himself in his letter to M/s Sociedale de Fomento dated 8th December, 1995, which is annexed as Exh. G in Writ Petition No.268 of 1996. It is true that even after the order of the Controller, by Order of 20th October, 1981, the mining concession was modified into a mining lease for a period of 30 years starting from 1st October 1963. This exercise of power could only have been done if there was a mining concession/mining lease in existence on 8th May, 1979.

There was no mining lease/concession in existence from 6th April 1976, or, at least, on 10th May 1978. At any rate, it was not operational. The submission however, is that the Orders of 6th April 1976 or 10th May, 1978, are nullities as the provisions of the MMRD Act, 1957, would not be applicable to mining concession and also considering the two Division Bench judgments of the Court referred to earlier. If that be the case, on the same principle, there would also have been no jurisdiction in the authority to modify the mining concession into a lease on 20th October, 1981.

Before adverting to the issue of nullity we may refer to the judgment of the Division Bench of this Court as to what has been decided therein. In Special Civil Application No.151/B/1975 this is what this Court stated in paragraph 26:-

> "26. In view of the fact that the Government has, in the affidavits filed on its behalf, not treated the concession granted to the petitioner as existing mining leases before Section 16 of the 1957 Act came into force in this Territory and since on this ground alone it can be held that the Controller of Mining Leases cannot proceed to exercise powers under Section 16, we have not thought it either fit or necessary to go into the question of alleged recognition. Mr. Harbans Lal also pointed out that under the 1957 Act no person is allowed to undertake any prospecting or mining operation in any area except under and in accordance with the terms and conditions of the prospecting licence or a mining lease granted under the Act or the Rules made thereunder. This is a question which does not, in our opinion,

> arise for our decision on the pleadings of the parties in this case. It is not necessary for us to say anything on the subject except to mention that if, apart from the question of modification of the concessions treating them as leases, any other question arises, then the Government may, notwithstanding this judgment, proceed to take such appropriate action as they may think fit."

From the above, it will be clear that the petition was disposed of on the stand taken by the Government in its affidavit wherein it had been contended that it had not treated the concession granted to the petitioner as existing mining lease before Section 16 of the 1957 Act came into force in the Territory. In the earlier part of the paragraph, the Court also noted the contention that the concessions granted by the erstwhile Portuguese Government must be deemed to be mining leases under the 1957 Act, was given up. At the same time, the Court observed that it is not placing too much emphasis on this withdrawal of the contentions which had been earlier given up. The Court noted the contention of the Union of India that no person is allowed to undertake any prospecting or mining concession in any area except under the terms of the mining lease. Reference was also made to the Judgment in the case of **Vinodkumar Shantilal Gosalia vs. Gangadhar Narsingdas Agarwal & Ors.**, (supra), where the Government had taken a contention that the mining concessions obtained by the petitioners from the erstwhile Portuguese Government, though may be leases were not in existence after 1st October, 1963. The Court observed that if this is so, then

they were not liable to be modified under Section 16 of the 1957 Act, which came into force on 15th January, 1966. The judgment of the Division Bench of this Court, therefore, really did not decide the issue either whether the concessions were mining leases or, for that matter, whether the Government of India had recognized the mining leases on the date of liberation. On the contrary, the stand of the Government before the Court was that they were not in existence after 1st October, 1963, and, therefore, were not in existence. The Court however, in paragraph 26 noted that it is not necessary to go into the question of alleged recognition. The question then really is whether the order of termination in 1976 is really void and if so what are the consequences and can the petitioner raise the contentions of voidness in the petition. It is not necessary to advert to all the Judgments referred to as to what is a "void" and a "voidable" order. Suffice if reference is made to Government of Orissa. vs. Ashok Transport Agency & Ors. (supra). The law may be summarized thus:-

> "50. Thus the expressions 'void' and 'voidable' have been the subject-matter of consideration on innumerable occasions by courts. The expression 'void' has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same, no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceedings or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend.

> Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be one which is not a nullity but for avoiding the same, a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable."

Respondents however contend that this contention could have only been raised by way of defence as a shield and not as a sword and for that purpose reliance was placed on some paragraphs of "Adminstrative Law" by Wade, 8th Edition. In our opinion, that issue need not be decided finally in the petition, as it will be purely academic. However, we may only quote from paragraph 47 of the judgment in the case of **Government of Orissa vs. Ashok Transport Agency & Ors.**, (supra), where the Apex Court has observed as under:-

> "49. Clive Lewis in his work Judicial Remedies in Public Law at p.131 has explained the expressions 'void' and 'voidable' as follows:-
>
> 'A challenge to the validity of an

> act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant.'."

From these observations it appears that the plea that an act or an order is a nullity need not be necessarily be only by way of a shield and not as a sword. A void order can be ignored as being non-est. If it can be ignored a petition would be maintainable, if otherwise in law the reliefs sought for are capable of being granted. But to our mind this entire exercise is purely academic. The stand of the petitioners themselves is that their concession is not a lease. If the concession is not a lease then the provisions of the MMRD Act and the Mineral Rules would be inapplicable, including the order of 1981, modifying the concession into a lease. That equally would be a nullity as under Section 16 the authority would have no jurisdiction. That question perhaps would have been required to be decided if the concession was existing at the time the application was made for inclusion and there was power under Section 4(3) in the Central Government to include excluded leases into the Schedule. Therefore, in our opinion, for deciding the controversy which arises in this petition, really speaking, the issue as to whether the

decision taken in 1976 is void is really not required to be answered. The decision in the year 1976 was taken at any rate on the ground that the mine was not being operated. The petitioners had a remedy by way of revision, which was preferred. That revision was dismissed. The late N.P. Sukerkar thereafter took no further steps in the matter. To our mind, therefore, having accepted the decision in the year 1978, it will not be open to the petitioners in these proceedings now to raise the issue of nullity, more so after the respondent no.3 having been granted the prospecting licence, has worked on the area, spent money and has now applied for a mining licence, which the respondents no.1 and 2 have agreed to grant, subject to conditions. This would really be not a fit case where this Court should exercise its extraordinary jurisdiction. Considering the above the second and third question are answered accordingly.

12. We then come to the last issue as to whether the petition is hit by laches. In the instant case, as we have noted, the revision against the order of termination was dismissed on 10th May, 1978. The area was earlier notified for grant on 5th January, 1977, in the official gazette. Pursuant to that as can be seen from the affidavit of respondent no.2, there were three applications which were deemed to be rejected. Respondent no.3 applied in the year 1984 and pursued the matter till the

prospecting licence was given in his favour. Apart from that, the petitioners in Writ Petition no.268 of 1996 had also applied on 9th August, 1988, for prospecting licence, as has been noted from the affidavit filed on behalf of respondent no.2, which application was deemed to be rejected. The case of the petitioners themselves is that on 6th October, 1972 they had entered into an agreement with M/s. Sociedade de Fomento Industrial Ltd. for sale of iron ore from the mine in question. Even if an order was passed modifying the mining lease on 20th October, 1981, the petitioners have at least not shown that they had in existence a mining lease which was being operated. Considering these facts, in our opinion, reliance placed on the case of **Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. & Anr.,** (supra) is misplaced as also the judgment in the case of **Madras Port Trust V. Hymanshu International vs. Venkatadri,** (supra). The petition itself was filed in the year 1996. Respondent no.3 was pursuing his application for mining licence dated 20th December, 1984, and prospecting licence of 3rd August, 1989. The State of Goa issued a letter agreeing to convert the application for mining lease into an application for prospecting licence. It may also be pointed out that on 18th May, 1993, M/s. Sociedade de Fomento Industrial Ltd. had made an application for renewal of mining lease on behalf of the petitioner which was rejected in 1993. What the petitioner

and respondent no.3 are contesting are purely exploitation of rights to minerals vested in respondent no.1. In these circumstances, we must hold that the petition as filed is hopelessly barred by laches and is liable to be dismissed. The cause would have first arisen in 1978, when the revision was dismissed,or in 1987, when the 1987 Act came into force and the mining concession of the petitioner was not included in the schedule and at least in 1993, when the proposed extension of lease expired. In the meantime, rights have accrued in favour of the respondent no.3, who has spent substantial amount in carrying out prospecting operations. A petitioner who has not been diligent of his rights if any, and allowed third party rights to be created, will not be entitled to the exercise of the extraordinary jurisdiction of this Court.

We may note that arguments were advanced based on analysis of the judgment in the case of **Vinodkumar Shantilal Gosalia vs. Gangadhar Narsingdas Agarwal** (supra), as to whether the Government of India had recognized the mining concession. In view of the relief sought for by the petitioners, namely that their names be included in the Schedule under the Act of 1987, which has been rejected, it is really not necessary for us to decide that issue and also considering the contention of the petitioners themselves that respondent no.3 had not raised the issued by way of pleadings.

13. In the light of that, Rule discharged. There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

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